

THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204

STATE OF INDIANA)
) SS
COUNTY OF MARION)

MILTON SMITH,
Complainant,

DOCKET NO. 04593

vs.

CITY OF MUNCIE *et. al.*,
Respondent.

ORDER

Comes now the Hearing Officer, and files his Recommended Findings of Fact, Conclusions of Law and Order, as follows:

(H.I.)

And Complainant, by counsel, files his Objections to Recommended Findings of Fact, Conclusions of Law and Order, as follows:

(H.I.)

And Respondents, by counsel, file their Reply to Complainant's Objections to Recommended Finding of Fact, Conclusions of Law and Order, as follows:

(H.I.)

And Hearing was held on said Objections before the Indiana Civil Rights Commission on May 15, 1980, the parties being represented by counsel.

And Complainant, by counsel, files his Request for Permission to File Brief, as follows:

(H.I.)

And Respondents, by counsel, file their Reply to Request for Permission to File Brief, as follows:

(H.I.)

And Re-Hearing was held on said Objections before the Indiana Civil Rights Commission on September 18, 1980, the parties being represented by counsel. The Chairman denied Complainant's Request for Permission to File Brief and ordered that the Brief attached thereto be stricken from the record.

And the Indiana Civil Rights Commission, having considered the record in this cause and the arguments of counsel pursuant to the Administrative Adjudication Act, IC 4-22-1-12, now finds that Complainant's Objections to Recommended Findings of Fact Conclusions of Law and Order shall be, and hereby are, sustained, and enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Complainant Smith is a black male currently residing in Muncie, Indiana.
2. Respondent City of Muncie is a second-class city duly constituted pursuant to the laws of the State of Indiana, a person as defined in the Indiana Civil Rights Law IC 22-9-1-3(a), and an employer as defined in the Indiana Civil Rights Law. IC 22-9-1-3(h).

3. Respondent Muncie City Police Department (hereinafter "Police Department") is the police department for the City of Muncie, duly constituted pursuant to the laws of the State of Indiana, a person as defined in the Indiana Civil Rights Law, IC 22-0-1-3(a), and an employer as defined in the Indiana Civil Rights Law, IC 22-9-1-3(h).

4. Respondent Cordell H. Campbell at all times relevant to this cause was Chief of the Police Department, an ex-officio member and President of the Police Pension Board for the City of Muncie Police Pension Fund, and a person as defined in the Indiana Civil Rights Law, IC 22-9-1-3(a).

5. Respondent Police Pension Board (hereinafter "Pension Board") is the board of trustees of the Police Pension Fund for the City of Muncie duly constituted pursuant to IC 19-1-24 and a person as defined in the Indiana Civil Rights Law, IC 22-9-1-3(a).

6. Respondents Jack E. Turner, Donald R. Scroggins, Larry McCaffrey, Harold Duke and Ernest Holaday at all times relevant to this cause were white males, employees of the Police Department, members of the Pension Board, and persons as defined by the Indiana Civil Rights Law, IC 22-9-1-3(a); Ernest Holaday is now deceased.

7. Smith was employed by the Police Department as a special police officer pursuant to IC 18-1-11-5, beginning January 27, 1972.

8. As a special police officer, Smith was appointed by the Chief of the Police Department; his appointment was not subject to approval by the Merit Commission and he was not a member of the Police Pension Fund.

9. In 1973 there were six (6) vacancies for regular officers with the Police Department.

10. In order to receive appointments as regular officers with the Police Department, candidates were required to receive approval from the Merit Commission pursuant to IC 19-1-14 and then to be accepted as members of the Pension Fund pursuant to IC 19-1-24.

11. Smith was submitted to the Merit Commission by Chief Campbell as a candidate and was approved.

12. Thereafter in August, 1973, Smith was required to take a physical and psychiatric examination as a prerequisite to consideration for admission to the Police Pension Fund.

13. At a meeting of the Pension Board on September 4, 1973, Smith was denied admission to the Police Pension Fund.

14. Because Smith was denied admission to the Police Pension Fund, he was not hired as a regular police officer and Chief Campbell discharged him from his position as a special police officer; someone else was hired to fill the position he would have held.

15. The Chief of Police was fully familiar with Smith's employment record as a special police officer and also knew of the circumstances surrounding Smith's prior discharge from the Madison County Sheriff's Department before Smith's name was submitted as a candidate to be a regular police Officer.

16. As a special police officer, Smith could have been discharged by the Chief of Police at any time with no showing of cause.

17. The Chief of Police recommended to the Merit Commission that Smith be approved by them.

18. The Merit Commission was informed of Smith's employment record as a special police officer and of the circumstances surrounding Smith's prior discharge from the Madison County Sheriff's Department when it approved Smith and forwarded his name to the Pension Board.

19. The actions of the Chief of Police and the Merit Commission show that Smith's performance as a special police officer was satisfactory and that he was eligible for appointment as a regular police officer subject to acceptance as a member of the Police Pension Fund by the Pension Board.

20. From January 1, 1972 to January 1, 1975, the Pension Board took the following action with respect to persons considered for membership in the police Pension Fund:

Total number of persons considered:	32
Black persons considered:	03
White persons considered:	29
TOTAL number of persons approved	26
Black persons approved:	01

White persons approved:	25
TOTAL number of persons rejected	06
Black persons rejected:	02
White persons rejected:	04

21. The two black persons rejected were Smith and Henry Gudger.
22. Henry Gudger also filed a complaint with the Indiana Civil Rights Commission and was subsequently accepted as a member of the Police Pension Fund retroactively to September 4, 1973
23. The alleged reason for rejection of Henry Gudger was that he was overweight.
24. Complainant's Exhibit B, Report Numbers 11, 13 and 24 show that white persons were approved even though it was stated on their physical examination reports that they were obese.
25. The alleged reason for rejection of Smith was that his psychiatric examination report was not satisfactory; the parties stipulated that his physical examination report was satisfactory.
26. Smith's psychiatric report did not disqualify him from membership in the Police Pension Fund.
27. As stated above in Paragraph 19, the action of the Chief of Police and the Merit Commission, taken in full knowledge of Smith's record, show that Smith was a satisfactory police officer.
28. Respondent members of the Pension Board were familiar with the procedures and requirements for candidates presented to them for membership in the Police Pension Fund and were aware that Smith had been a special officer and had been approved by the Merit Commission.
29. Smith was qualified for membership in the Police Pension Fund based on his physical and psychiatric examination.
30. Complainant's Exhibit B, Report Numbers 1, 3, 4, 8, 11, 12, 17, 26 and 32 show that white persons were approved even though their psychiatric reports contained comments which appear to lay persons to be pejorative.

31. Complainant's Exhibit B, Report Numbers 10, 18 and 30 show that white persons rejected for unsatisfactory psychiatric reports received clearly unfavorable reports.

32. Smith's psychiatric report was comparable to reports of white persons who were accepted listed above in Paragraph 30.

33. The evidence shows that the Pension Board rejected two (2) of three (3) black applicants, but only four (4) of 29 white applicants; that the physical and psychiatric reports of rejected black applicants were comparable to those of accepted white applicants; and that therefore the reasons given by Respondents for rejection of black applicants were pretextual.

34. Review of the psychiatric reports submitted as exhibits shows that in many cases the reports are not addressed to the question of state of health of applicants with a view to existing or potential disabilities which may result in demands on the pension fund; rather, they are overbroad and lend themselves to misinterpretation and misuse by lay persons such as members of the Police Pension Fund.

35. Comparing Smith's tax returns for the years 1974 through 1976 with the pay rate and uniform allowance for police officers stipulated by the parties, and taking into account his unemployment after September 4, 1973, as a result of denial of membership in the Police Pension Fund and discharge as a special police officer, Smith lost salary in the amount of twelve thousand one hundred ninety five dollars (\$12,195.00).

36. Any Conclusion of Law which should have been deemed to a Findings of Fact is hereby adopted as such.

CONCLUSION OF LAW

1. The Commission has jurisdiction over the subject matter and the parties.
2. The Complaint was timely filed.
3. All Respondents are "persons" as that term is defined in IX 22-9-1-3(a).

4. The City of Muncie and the Police Department are “employers” as that term is defined in IC 22-9-3(h).
5. Respondents committed a “discriminatory practice” as that term is defined in IC 22-9-1-3(1) in that Smith was excluded from equal opportunities because of his race when he was rejected for membership in the Police Pension Fund, was not made a regular police officer, and was discharged as a special police officer.
6. As a result of the discriminatory practice, Smith lost salary in the amount of twelve thousand one hundred ninety five dollars (\$12,195.00).
7. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Smith shall be accepted for membership in the Police Pension Fund and made a regular police officer with the Police Department within thirty (30) days of receipt of notice of approval of this order by a majority of the Commission.
2. Smith shall be credited for all purposes, including seniority and membership in the Pension Fund, as if his service had been continuous and uninterrupted since September 4, 1973, and his probationary period satisfactorily completed as of September 4, 1974.
3. Respondent shall pay to Smith twelve thousand one hundred ninety five dollars (\$12,195.00) within thirty (30) days of receipt of notice that a majority of the Commission has approved this Order.
4. Respondents shall cease and desist from excluding black candidates for positions with the Police Department from equal opportunities by denying them membership in the Police Pension Fund.
5. Respondents shall take affirmative action to prevent misuse of psychiatric reports to deny applicants membership in the Police Pension Fund because of race. To that end, Respondents shall devise and submit to examining physicians written explanations of the purpose of the examinations pursuant to IC 19-1-24 and a statement of policy of equal employment opportunity regardless of race,

religion, color, sex, national origin or ancestry. Within sixty (60) days of receipt of notice of approval of this order by a majority of this Commission, Respondents shall report to the Commission in writing the action undertaken by Respondents pursuant to this Order and shall submit a copy of the Notice of examining physicians.

Dated: October 17, 1980